

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

IN RE:	)	CHAPTER 13
	)	
JAMES HENRY CYRIAX	)	CASE NO. 21-31764-KLP
	)	
	)	JUDGE KEITH L. PHILLIPS
DEBTOR.	)	

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U.S. BANK TRUST NATIONAL  
ASSOCIATION, AS TRUSTEE OF THE  
BUNGALOW SERIES IV TRUST,

MOVANT.

V.

JAMES HENRY CYRIAX  
14337 OLD BOND STREET  
CHESTERFIELD, VA 23832,

DEBTOR.

CARL M. BATES  
P.O. BOX 1819  
RICHMOND, VA 23218,

TRUSTEE.

RESPONDENTS.

**MOTION FOR *IN REM* RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C §  
362(d)(4)(B)**

**COMES NOW**, U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST ("Movant"), a secured creditor in the above-captioned case and, by and through counsel, and moves this Court to enter an order granting its request for *in rem* relief from the automatic stay pursuant to 11 U.S.C. §362(d)(4)(B) as to the real property located at 14337 OLD BOND STREET CHESTERFIELD, VA 23832 ("Property"), and, as grounds therefore, states as follows:

1. This proceeding seeking relief under 11 U.S.C. § 362 is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant

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to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On May 28, 2021, Debtor filed a petition with the Bankruptcy Court for the Eastern District of Virginia under Chapter 13 of Title 11 of the United States Bankruptcy Code.

**COUNT 1**  
**RELIEF FROM AUTOMATIC STAY**

3. On or about May 17, 2006, Debtor executed and delivered to Bank of America, N.A. a Note in the amount of Three-hundred thousand dollars (\$300,000.00), plus interest at the rate of 6.75% per annum to be paid over thirty (30) years. A copy of the Note dated May 17, 2006 is attached as **Exhibit A** and incorporated herein.

4. To secure the repayment of the sums due under the Note, Debtor executed and delivered to Bank of America N.A. a Deed of Trust also dated May 17, 2006, encumbering the real property (“Property”) described as:

**LEGAL DESCRIPTION**

ALL that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, lying and being in Matoaca District, Chesterfield Count, Virginia, designated as Lot 23, Section 1, Birkdale, all as more particularly shown on plat of survey by J.K. Timmons and Associates, P.C., dated April 20, 1994, recorded June 29, 1994, in the Clerk’s Office, Circuit Court, Chesterfield County, Virginia, in Plat Book 84, page 73 and 74, and to which plat reference is hereby made for a more particular description of the property.

A copy of the Deed of Trust is attached as **Exhibit B** and incorporated herein.

5. The Note and Deed of Trust were later transferred to Movant and Movant is the current holder of the Note and Deed of Trust.

6. The instant case is the sixth (6<sup>th</sup>) bankruptcy case pending during the preceding ten (10) years involving the Property.

(a) The Debtor filed a Chapter 13 Bankruptcy Case No. 11-37274 on November 16, 2011. The case was dismissed on August 2, 2012 due to Debtor’s failure to make Plan payments and comply with the terms of the confirmed Plan.

(b) The Debtor filed a Chapter 13 Bankruptcy Case No. 12-36528 on November 14, 2012. The case was dismissed on September 9, 2013 due to unreasonable delay and Debtor’s failure to comply with the terms of the confirmed Plan.

(c) The Debtor filed a Chapter 13 Bankruptcy Case No. 13-35756 on October 23, 2013. The case was dismissed on February 2, 2017 due to Debtor's failure to make Plan payments and comply with the terms of the confirmed Plan.

(d) The Debtor filed a Chapter 13 Bankruptcy Case No. 17-30961 on February 28, 2017. The case was dismissed on June 11, 2019 due to Debtor's failure to make Plan payments and comply with the terms of the confirmed Plan.

(e) Foreclosure proceedings on the Property were initiated on June 21, 2019 and were halted on June 28, 2019 when the Debtor filed a Chapter 13 Bankruptcy Case No. 19-33440. The case was dismissed on April 2, 2020 due to unreasonable delay and Debtor's failure to make payments under the proposed Plan.

(f) A foreclosure sale of the Property was scheduled for June 2, 2021 and cancelled on May 28, 2021 when the Debtor filed this instant Chapter 13 Case No. 21-31764.

7. The facts demonstrate Debtor's bad faith and scheme to hinder, delay or defraud Movant and its predecessors in interest from enforcing their rights under the Deed of Trust. Movant seeks an Order lifting and modifying the stay pursuant to 11 U.S.C. §362(d)(4)(B), for cause as the instant filing evidences a scheme to hinder, delay or defraud Movant by Debtor's bankruptcy filings over the past ten (10) years.

8. Upon information and belief, the approximate payoff, exclusive of legal fees and expenses incurred in the connection with the instant motion, due and owing to the Movant as of August 20, 2021 is \$471,134.21, with interest accruing at the daily rate of \$30.72.

9. The value of the Property is approximately \$381,705.00 pursuant to Debtor's Schedule A/B.

10. The Debtor's Plan, as initially proposed on May 28, 2021, provided that the Debtor make ongoing monthly mortgage payments to Movant. Debtor's failure to abide by the terms of the proposed Plan is cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1).

11. Debtor is in breach of the terms of the Note and Deed of Trust by failing to make the regular contract payments to Movant as and when they come due, from June 1, 2021 through August 1, 2021. Debtor is due for three (3) payments of \$1,604.43 each. Debtor is in post-petition default for June 1, 2021 for a total amount due of \$4,813.29.

12. The Debtor has not and cannot offer Movant adequate protection of its interest in the Property, and Movant avers it is not adequately protected.

13. Debtor's failure to pay Movant's obligation as and when due violates the terms of, and is a default under, the proposed Plan.

14. Debtor's account delinquency as well as Debtor's failure to maintain regular contract payments to Movant as required by the proposed Plan, constitute cause for relief from the automatic stay.

15. Movant has incurred reasonable attorney's fees and costs in connection with the prosecution of this motion.

**WHEREFORE**, U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST prays that this Court issue an order terminating the automatic stay and granting *in rem* relief pursuant to 11 U.S.C. §362(d)(4)(B) as to the real property located at 14337 OLD BOND STREET CHESTERFIELD, VA 23832 and granting the following:

a. Permit Movant to record a copy of this Order in the real estate records of the county in which the Property lies, which shall be valid and enforceable for a period of two (2) years following entry of the Order.

b. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

c. Award Movant its reasonable attorneys' fees and expenses associated with this Motion, and the Trustee is hereby authorized to modify the plan as necessary to accommodate this claim;

d. For such other relief as the Court deems proper.

This the 9<sup>th</sup> day of September, 2021.

**McMichael Taylor Gray, LLC**

/s/ Keith Yacko

Keith Yacko

Virginia Bar No. 37854

Attorney for Movant

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was provided via Regular U.S. Mail and/or Electronic Mail (CM/ECF) to the parties listed on the attached service list, this 9<sup>th</sup> day of September, 2021.

**SERVICE LIST**

**Via U.S. Mail:**

*Debtor*

James Henry Cyriax  
14337 Old Bond Street  
Chesterfield, VA 23832

**Via CM/ECF:**

*Attorney for Debtor*

James E. Kane  
Kane & Papa, PC  
1313 East Cary Street  
P.O. Box 508  
Richmond, VA 23218

*Trustee*

Carl M. Bates  
P.O. Box 1819  
Richmond, VA 23218

This the 9<sup>th</sup> day of September, 2021.

**McMichael Taylor Gray, LLC**

/s/ Keith Yacko

Keith Yacko

Virginia Bar No. 37854

Attorney for Movant

3550 Engineering Dr.

Suite 260

Peachtree Corners, GA. 30092

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